

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION**

GEORGIA STATE CONFERENCE OF	)	
THE NAACP, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	<b>CIVIL ACTION FILE</b>
v.	)	
	)	<b>NO. 3:11-CV-123-TCB</b>
FAYETTE COUNTY BOARD OF	)	
COMMISSIONERS, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**CONSENT DECREE**

Plaintiffs Georgia State Conference of the NAACP, Fayette County Branch NAACP, Henry Adams, Terence Clark, Alice Jones, John E. Jones, Dan Lowry, Ali Abdur-Rahman, Aisha Abdur-Rahman, Lelia Richardson, Emory Wilkerson<sup>1</sup>, Elverta Williams and Bonnie Lee Wright filed this action in part against the Fayette County Board of Education<sup>2</sup> and Bob Todd, Marion Key, Janet Smola, Terri Smith and Sam Tolbert<sup>3</sup>, members of the Fayette County Board of Education named in their official capacities (hereafter referred to as the Board of Education

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<sup>1</sup> Since the Complaint was filed, Mr. Wilkerson has moved to withdraw as a Plaintiff.

<sup>2</sup> The proper name for the entity capable of being sued under Georgia law is the Fayette County School District.

<sup>3</sup> Defendant Mr. Tolbert died on September 22, 2011.

Defendants<sup>4</sup>), seeking declaratory and injunctive relief prohibiting any further use of the Defendants' at-large method of election on the grounds that it dilutes the voting strength of Black voters in Fayette County in violation of Section 2 of the Voting Rights Act of 1975, as amended, 42 U.S.C. § 1973.

The Plaintiffs and Board of Education Defendants have agreed to settle this case without further litigation and move this Court for entry of judgment by consent decree as provided herein. Upon consideration of this motion, and for good cause shown, it is the opinion of this Court that the motion should be granted.

Accordingly, and based upon the consent and agreement of these parties, the Court makes the following findings:

1. This Court has jurisdiction over this case pursuant to Article III of the United States Constitution and 28 U.S.C. §§ 1331 and 1343(a)(3) & (4), and 2201.
2. This suit is authorized by 42 U.S.C. §§ 1973j(f) & 1983.
3. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.
4. Venue is proper in the Northern District of Georgia pursuant to 28 U.S.C. § 1391(b).

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<sup>4</sup> The Complaint also names as Defendants the Fayette County Board of Commissioners and Fayette County Board of Elections and Voter Registration. This Consent Decree is entered only as to the Board of Education Defendants.

5. Plaintiffs Georgia State Conference of the NAACP and Fayette County Branch NAACP are non-partisan, interracial membership organizations that advocate the full and equal voting rights of Blacks in Georgia, among other things.
6. Plaintiffs Henry Adams, Terence Clark, Alice Jones, John E. Jones, Dan Lowry, Ali Abdur-Rahman, Aisha Abdur-Rahman, Lelia Richardson, Elverta Williams and Bonnie Lee Wright are Black Americans, qualified electors, and residents of Fayette County School District in Fayette County, Georgia.
7. Defendant Fayette County School District is a political subdivision of the State of Georgia and is capable of suing and being sued in its own name.
8. Defendants Bob Todd, Marion Key, Janet Smola and Terri Smith are members of the Board of Education in Fayette County and are responsible for establishing voting districts for the Board of Education.
9. Bob Todd, Marion Key, Janet Smola and Terri Smith are Defendants sued in their official capacities only.
10. Fayette County School District is governed by a Board of Education consisting of five members elected at-large from within the District.

11. Each individual Board of Education member runs for one of five numbered post positions and must reside in one of five separate corresponding residency districts that he or she represents.
12. Defendant Board of Education Chairman Bob Todd represents Numbered Post/Residence District 4; Board of Education member Marion Key represents Numbered Post/Residence District 3, and Board of Education members Janet Smola, Terri Smith and Leonard Presberg, who was recently appointed by the Defendants to fill the unexpired term of deceased member Sam Tolbert, represents Numbered Post/Residence Districts 1, 2, and 5, respectively.
13. The Board of Education Defendants, both personally and through the conduct of their agents, servants and employees, were acting under color of state law at all times relevant to this action.
14. The total population of the Fayette County School District is 106,567 persons, of whom 75,802 (71.1%) are White, and 21,395 (20.08%) are Black.
15. Fayette County School District's total voting-age population is 78,468, of whom 57,766 are White (73.6%), and 15,247 are Black (19.5%).

16. The Parties have agreed upon a single-member redistricting plan that provides an equal opportunity for Blacks to elect candidates of their choice to the Board of Education in District 5, in which Blacks comprise 48.68 percent of the total population and 46.20 percent of the voting age population. This redistricting plan, attached as Exhibit A, is legally sound in all respects, as it followed traditional redistricting principles, including keeping communities of interest together, contiguity and compactness.
17. Under the Parties' agreed upon single-member redistricting plan in Exhibit A, Board of Education Chairman Bob Todd will represent District 4; Board of Education member Marion Key will represent District 3, and Board of Education members Janet Smola, Terri Smith and Leonard Presberg will represent Districts 1, 2, and 5, respectively.
18. In compliance with the mandate set forth in the local Constitutional Amendment found in 1970 Georgia Laws 979, the Board of Education has redistricted the School Board's districts from which the five members of the Board must qualify to comply with Constitutional provisions based on the 2010 census information. A copy of that map is attached to this decree as "Exhibit A" and is described in "Exhibit B".

19. Terms of office for the Board of Education are four years and are staggered.
20. The Board of Education Defendants have the authority to settle lawsuits and the parties agree that, in light of this agreement, it is not necessary to litigate this matter further.
21. The Board of Education Defendants have a substantial and compelling interest in avoiding a judicial finding of liability under Section 2 of the Voting Rights Act.

Based upon the foregoing, it is ORDERED, ADJUDGED, and DECREED as follows:

1. The Fayette County School District shall henceforth and for the duration of this Consent Decree conduct elections for members of its Board as follows:
  - a. The Board of Education of Fayette County shall be comprised of five members.
  - b. One member of the Board of Education shall be elected from each of the five districts outlined on the map attached to this Decree as Exhibit A and described in Exhibit B created by the Board of

Education to comply with its obligation under the local Constitutional Amendment found in 1970 Georgia Laws 979.

- c. Each such member of the Board of Education shall be elected by a majority of the votes cast by qualified electors residing within the boundaries of each respective single-member education district.
- d. Any person offering as a candidate to represent an education district on the Board of Education must reside in the district for which he or she offers for a period of at least 12 months prior to the date of the election.
- e. Consistent with the Board of Education Defendants' use of staggered terms, Board of Education member Marion Key (representing District 3), Board of Education member Janet Smola (representing District 1), and Board of Education member Terri Smith (representing District 2), will be up for re-election in November, 2012. The Parties have agreed that newly-appointed Board of Education member, Leonard Presberg (representing District 5), will also be up for election in November 2012 in a special election to be held pursuant to the terms of O.C.G.A. §20-2-54.1(a)(1). Board of Education Chairperson Bob Todd

(representing District 4) will be up for re-election in November, 2014 together with the person elected in the 2012 special election representing District 5. Thereafter, the person representing District 5 will serve a regular four (4) year term.

2. Except as specifically altered by the terms of this Consent Decree, state law, including the local constitutional amendment found in 1970 Ga. Laws 979, shall continue in full force and effect and shall govern the method of electing members of the Board of Education in Fayette County. The current members of the Board of Education shall continue to hold office until they are succeeded pursuant to state law as modified by this Consent Decree, and during their tenure in office shall possess and exercise all powers and duties conferred upon them by state law.
3. This Consent Decree shall be binding upon these Defendants, their successors, agents, attorneys and assigns.
4. This Consent Decree shall remain in effect until the General Assembly or other legislative body duly authorized under state law shall enact a new plan for electing members of the Board of Education in the Fayette County School District consistent with the terms of this decree and that also complies with Section 2 of the Voting Rights Act, 42 U.S.C. § 1973,



and the one-person-one vote standard of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

5. Pursuant to Rule 54(b), upon entry of this order, the Consent Decree shall constitute a final judgment as to the Plaintiffs and the Board of Education Defendants. The Court expressly finds that there is no just reason for delay of entry of final judgment as to these parties pending the resolution of the remaining claims against the County Defendants.

With respect to the Plaintiffs' claim for attorney's fees, it is further ORDERED as follows:

1. The Plaintiffs in this litigation are "the prevailing party" within the meaning of 42 U.S.C. § 1988 and are thereby entitled under that statute to a "reasonable attorney's fee" as to the Board of Education Defendants.
2. Pursuant to 42 U.S.C. § 1988 and 28 U.S.C. § 1920, the Plaintiffs, as the prevailing party, are also entitled to recover their costs and reasonable expenses, as to the Board of Education Defendants.
3. No special circumstances exist in this case which would make such an award unjust.
4. The amount of \$5,000 is a reasonable award of fees, costs and expenses for this case.

SO ORDERED this 24th day of February, 2012.

A handwritten signature in black ink, appearing to read "Timothy C. Batten, Sr.", with a long, sweeping horizontal stroke extending to the right.

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UNITED

TIMOTHY C. BATTEN, SR.  
STATES DISTRICT JUDGE

Consented to by:

**s/Wayne B. Kendall**

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**s/Ryan P. Haygood**

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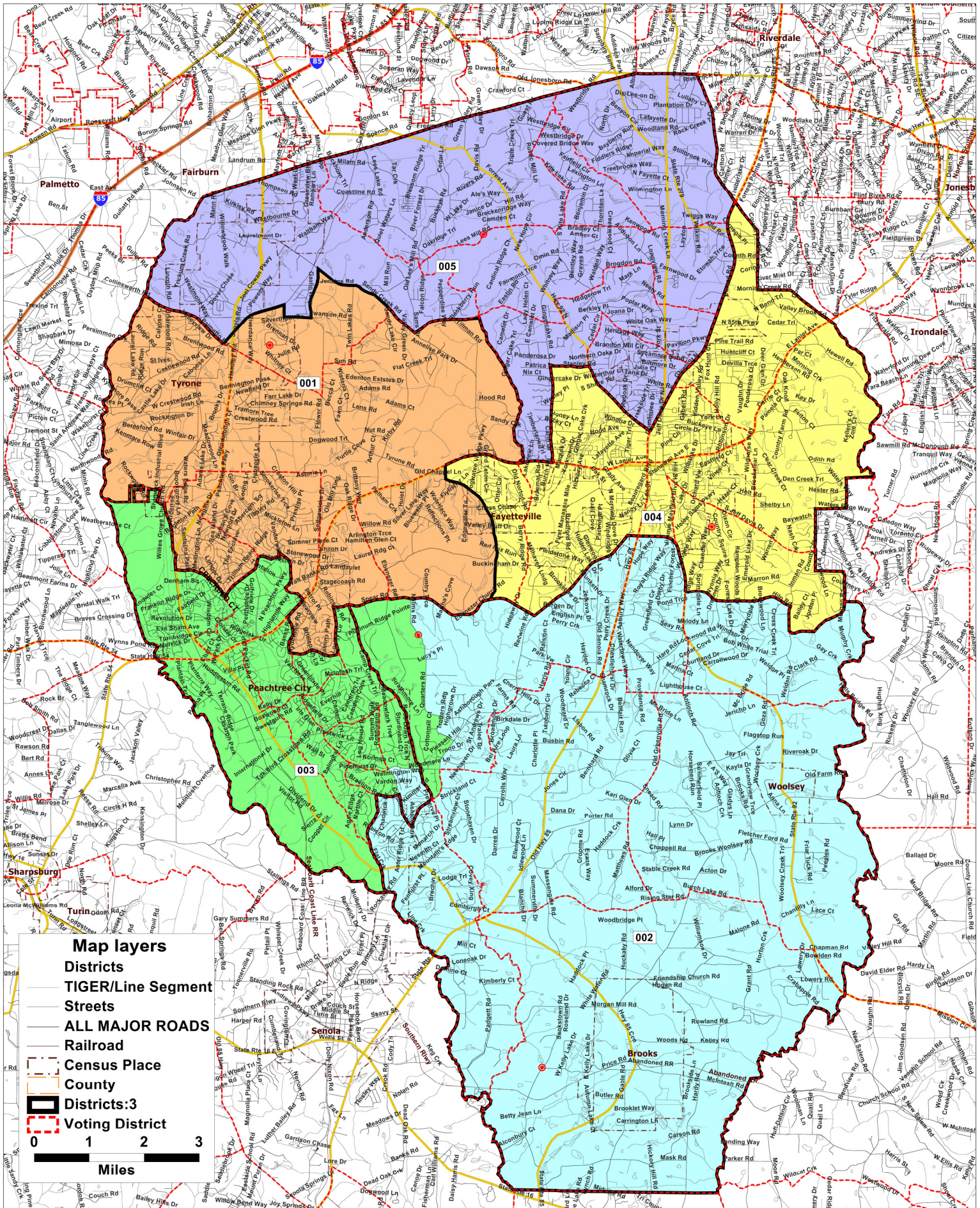
FOR DEFENDANTS  
COUNTY BOARD OF  
EDUCATION, BOB TODD,  
RION KEY, JANET SMOLA,  
SMITH and SAM TOLBERT

# EXHIBIT A



# FAYETTE COUNTY SCHOOL BOARD DISTRICTS -- NOV 3 PROP REV OVERLAID WITH NOV 3 PROP BOUNDARIES IN HEAVY BLACK LINE

NOV 9 2011





## EXHIBIT B

Plan: FAYETTE - NOV 3 PROP REV

Plan Type:

Administrator

User:

## Plan Components Report (short format)

Tuesday, January 3, 2012

3:18 PM

### District 001

#### Fayette County

VTD: 11309 - RAREOVER

VTD: 11310 - SANDY CREEK

2000 2001 2002 2005 2006 2009 2010 2011 2014

2002 2017 2018 2019 2020 2021 2026 2033 2034 3003 3011

VTD: 11311 - SHAKERAG EAST

VTD: 11316 - MCINTOSH

VTD: 11326 - WILLOW POND

1014 1015 1016 1017 1020 1021 1022 1023 1024 1025 1026 1027

1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1047 1048

1049 1050 1051 1052 1059 1060 1061 1062 1063 1064

VTD: 11327 - DOGWOOD

VTD: 11331 - FIELDING RIDGE

### District 002

#### Fayette County

VTD: 11302 - BROOKS

VTD: 11313 - STARRSMILL

VTD: 11314 - WHITEWATER

1065 1066 1068 1069 1070 1071

2010 2011 2012 2013 2014 2015 2016 2017 2018 2019

2045 2064

1000 1001 1002 1003 1004 1005 1006 1007 1012 1013 1014 1015

1016 1017 1018

VTD: 11315 - WOOLSEY

VTD: 11322 - BRAELINN

1004 1005 1006 1007 1008 1012 1013

VTD: 11325 - HARPS CROSSING

VTD: 11334 - RISING STAR

VTD: 11336 - ANTIOCH

### District 003

#### Fayette County

VTD: 11312 - SHAKERAG WEST

VTD: 11314 - WHITEWATER

3013 3019 3020 3021 3023 3025 3062

1067

1003 2000 2001 2003 2004 2005 2020

Plan: FAYETTE - NOV 3 PROP REV

Administrator:

Type:

User:

**District 003 (continued)*****Fayette County (continued)***

VTD: 11317 - OAK GROVE

VTD: 11318 - KEDRON

VTD: 11319 - ABERDEEN

VTD: 11320 - WINDGATE

VTD: 11321 - FLAT CREEK

VTD: 11322 - BRAELINN

1018 1019 1020 1021 1022 1023 1024 1025 1026 1027

2002 2006 2007 2008 2009 2021 2022

VTD: 11332 - WILLOWBEND

VTD: 11333 - CAMP CREEK

**District 004*****Fayette County***

VTD: 11304 - FAYETTEVILLE EAST

VTD: 11305 - FAYETTEVILLE WEST

VTD: 11306 - FLINT

VTD: 11324 - BANKS

VTD: 11326 - WILLOW POND

1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011

1012 1013 1018 1019 1038 1039 1040 1041 1042 1043 1044 1045

1046 1053 1054 1055 1056 1057 1058 1072 1075

VTD: 11329 - JEFF DAVIS

VTD: 11330 - MURPHY

VTD: 11335 - SPRING HILL

**District 005*****Fayette County***

VTD: 11301 - BLACKROCK

VTD: 11303 - EUROPE

VTD: 11307 - HOPEFUL

VTD: 11308 - MORNING CREEK

VTD: 11310 - SANDY CREEK

1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011

1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023

1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035

1047 1048 1049 1050 1051 1052 1066 1067 2003 2004 2015

1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011

1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023

1024 1025 1026 1027 1028 1029 1030 1031 2000 2001 2003 2004

2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016

2027 2028 2029 2030 2031 2032 2035 2036 2046 3000 3001 3002

VTD: 11323 - KENWOOD

VTD: 11328 - OAK RIDGE



**PLAN NAME: FAYETTE SB – NOV 3 PROP REV**

PLAN TYPE: LOCAL

DATE: NOV 11 2011

**Population Summary Report**

DISTRICT	POPULATION	DEVIATION	% DEVN.	BLACK	% BLACK	ALL OR PART BLACK	% A/P BLACK	HISPANIC ORIGIN	%HISP
FAYETTE	106,567			21,395	20.08	22,498	21.11	6,760	6.34
18+ POP (VAP)	78,468			14,908	19.00	15,355	19.57	4,183	5.33
1	20,530	-783	-3.67	1,929	9.40	2,114	10.30	1,266	6.17
18+ POP (VAP)	15,070			1,288	8.55	1,349	8.95	769	5.10
2	21,789	476	2.23	1,726	7.92	1,822	8.36	829	3.80
18+ POP (VAP)	15,688			1,250	7.97	1,289	8.22	513	3.27
3	21,745	432	2.03	1,723	7.92	1,946	8.95	1,728	7.95
18+ POP (VAP)	15,836			1,128	7.12	1,203	7.60	1,118	7.06
4	21,638	326	1.52	6,170	28.51	6,458	29.85	1,064	4.92
18+ POP (VAP)	16,243			4,175	25.70	4,292	26.42	686	4.22
5	20,865	-448	-2.10	9,847	47.19	10,158	48.68	1,873	8.98
18+ POP (VAP)	15,631			7,067	45.21	7,222	46.20	1,097	7.02
<hr/>									
TOTAL POPULATION	106,567								
IDEAL DISTRICT POPULATION	21,313								

**SUMMARY STATISTICS**

POPULATION RANGE: 20,530 TO 21,789  
 RATIO RANGE: 1.06  
 ABSOLUTE DEVIATION RANGE: -783 TO 476  
 ABSOLUTE OVERALL RANGE: 1,259  
 % DEVIATION RANGE: -3.67% TO 2.23%  
 RELATIVE OVERALL DEVIATION: 5.91%  
 ABSOLUTE MEAN DEVIATION: 492.80  
 RELATIVE MEAN DEVIATION: 2.31%  
 STANDARD DEVIATION: 577.20